

SURROGACY REGULATION ACT 2021: A COMPREHENSIVE OVERVIEW OF INDIA'S NEW SURROGACY LAWS

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INTRODUCTION

In August 2021, Parliament passed the Surrogacy (Regulation) Act, 2021, which aims to regulate the practice of Surrogacy in the country. The act replaces the previous Surrogacy (Regulation) Bill, 2019, which had been pending discussion and approval in the Indian Parliament since 2019. The new law represents a significant shift in India's approach to Surrogacy and has several important provisions that seek to safeguard surrogates' rights and intended parents. In this article, the author will provide a comprehensive overview of India's new Surrogacy laws.

In this article author seeks to provide a comprehensive overview of India's Surrogacy Regulation Act 2021, delving into its key provisions, implications, and potential impact on the practice of Surrogacy. By exploring the various aspects of this legislation, we aim to shed light on the significance of India's new Surrogacy laws in ensuring the welfare and protection of all stakeholders involved in Surrogacy arrangements.

BACKGROUND AND UNDERSTANDING OF SURROGACY

In the practice of Surrogacy, a woman conceives and delivers a child on behalf of another person or a couple. India has been a popular destination for Surrogacy for many years, with many intended parents coming from overseas to take advantage of the lower costs and easier regulations. However, concerns about the exploitation of surrogates and the lack of legal protections for all parties involved have led to calls for greater regulation.

Now to understand Surrogacy in more detail we will see, two major types of Surrogacy and some legal and ethical concern of unregulated Surrogacy.

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Types of Surrogacy:

Altruistic Surrogacy: Altruistic surrogacy refers to a Surrogacy arrangement where the surrogate mother does not receive financial compensation beyond the reimbursement of medical expenses and related costs. The primary motivation for the surrogate is to help someone else fulfill their desire to have a child.

Commercial Surrogacy: Commercial surrogacy involves a contractual agreement where the surrogate mother receives financial compensation for carrying the pregnancy. It is a controversial practice, as critics argue that it can potentially exploit vulnerable women and commodify the reproductive process.

Ethical and Legal Concerns of Unregulated Surrogacy

Exploitation: In the absence of regulations, there is a risk of surrogate mothers being exploited or subjected to unfair treatment.

Lack of Legal Protection: Unregulated Surrogacy arrangements may lead to legal uncertainties and disputes, leaving both intended parents and surrogates vulnerable.

Commercialization and Commodification: Unregulated commercial Surrogacy can raise concerns about the commodification of reproductive services and the potential for exploitation of surrogate mothers for financial gain.

Reproductive Tourism: Without proper regulations, unregulated Surrogacy can lead to the emergence of "reproductive tourism," where individuals seek Surrogacy services in countries with lax laws, potentially exacerbating ethical and legal challenges.

It is these ethical and legal concerns that highlight the necessity of comprehensive regulations, such as India's Surrogacy Regulation Act 2021, to ensure the protection and well-being of all parties involved in Surrogacy arrangements.

EVOLUTION OF SURROGACY LAWS IN INDIA

The evolution of Surrogacy laws in India saw the country become a popular destination for international Surrogacy due to affordability and medical infrastructure. However, the previous regulatory framework was inadequate, lacking comprehensive regulations and safeguards. The Surrogacy Regulation Act 2021 was enacted to address these issues, providing a robust

framework to protect the rights of surrogate mothers and intended parents and promote ethical practices. This act represents a significant shift towards a more regulated and transparent approach to Surrogacy in India, filling the gaps left by the previous framework and ensuring the welfare of all parties involved.

KEY PROVISIONS OF THE SURROGACY REGULATION ACT 2021

Eligibility: The act lays out specific eligibility criteria for intended parents and surrogates. For intended parents, they must be Indian citizens who have been married for at least five years and are unable to conceive a child naturally or through other forms of assisted reproductive technologies. They must be a close relative of the intended parents to qualify as a surrogate, be between the ages of 25 and 35 years, and have given birth to at least one child before.

Altruistic Surrogacy: The act only allows for altruistic Surrogacy, where the surrogate mother is not compensated for her services, except for medical expenses and insurance coverage. The new law forbids commercial Surrogacy, which involves paying the surrogate mother a fee.

Establishment of National Surrogacy Board: Under the act, a National Surrogacy Board would be established to supervise and control the nation's Surrogacy industry. The board will be responsible for granting licenses to Surrogacy clinics and ensuring that they comply with the provisions of the law.

Protection of Surrogates: The act includes several provisions aimed at protecting the rights and welfare of surrogate mothers. These include mandatory health checks, insurance coverage, and the right to withdraw from the Surrogacy arrangement at any time before the embryo transfer.

CHALLENGES TO THE SURROGACY (REGULATION) ACT, 2021

The Surrogacy (Regulation) Act, 2021 is being challenged in the Delhi High Court by two individuals who are prohibited from using Surrogacy under the act. They argue that the act violates their constitutional rights to privacy and reproductive autonomy. The act fails to balance the protection of surrogate mothers and children from exploitation with women's fundamental reproductive rights. By prohibiting commercial Surrogacy, it reduces the number of available surrogates and restricts options for intended parents. Altruistic Surrogacy may also lead to emotional issues and lacks third-party involvement, making the process more complex.

REPRODUCTIVE AUTONOMY

The Surrogacy (Regulation) Act, 2021 violates Article 21 of the Constitution, which guarantees the fundamental right to reproductive autonomy. Reproductive autonomy involves the right to choose whether and how to have children, free from government intervention. The Act restricts men who are not married, divorced, or widowed, heterosexual couples who are not married but live together, transgender couples, and homosexual couples who are married or live together. The Demonstration is restricted in its application and fundamentally diminishes the regenerative decisions of those rejected.

WAY FORWARD

The Surrogacy (Regulation) Act, 2021 is a step toward regulating Surrogacy practices in India. To balance the interests of the intended parents, the surrogate mother, and the kid, there must be a more dynamic supervisory system. The Act needs to be more inclusive and balanced to respect the fundamental right to reproductive autonomy and privacy guaranteed under Article 21 of the Constitution. The Act must address the concerns of women's work and provide legitimate income to surrogates. The Act must also address the emotional complications arising from altruistic Surrogacy and ensure third-party involvement to navigate through the complex process. The Act must also provide for the reproductive choices of those excluded and regulate the prices of services.

CONCLUSION

The Surrogacy (Guideline) Act, 2021 is a significant step in the right direction in managing Surrogacy in India. Although it aims to safeguard the rights and interests of surrogate mothers, intended parents, and the child, it has been criticized for being overly stringent. However, the Act is an important step forward in regulating Surrogacy in India and provides a framework for future discussions and refinements. It acknowledges the importance of informed consent, the right to privacy, and proper medical care for surrogate mothers, but must address the concerns raised by critics, such as the prohibition on commercial Surrogacy, which may push intending parents towards exploitative practices. It is also important to recognize the diverse experiences of surrogates and provide adequate support and compensation for their contribution to the process.

India's Surrogacy (Regulation) Act, 2021 represents a changing perspective on Surrogacy. While it prioritizes the protection of all parties, it is crucial to strike a balance with the fundamental rights to reproductive autonomy and privacy. Policymakers and stakeholders should aim for a more inclusive and equitable approach that respects the dignity and rights of surrogate mothers, intended parents, and the child.



REFERENCES

- Surrogacy (Regulation) Act, 2021
- Karan Balraj Mehta and Anr. Vs. Union Of India MANU/SCOR/48225/2023
- Assisted Reproductive Technology (Regulation) Act, 2021

